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Legal Division

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Federal Communications Commission
Office of the Secretary

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FCC MAIL BRANCH

May 22, 1992

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Subject: Notice of Proposed Rulemaking / In the Matter of the Telephone Consumer
Protection Act of 1991: Public Law - 102-243 (CC Docket No. 92-90)

Dear Commissioners:

I understand the Federal Communications Commission has issued a Notice of Proposed Rulemaking relating to the Telephone Consumer Protection Act of 1991 (TCPA), Public Law 102-243. On behalf of Amway Corporation and its many independent distributors living and doing business in all 50 states and a number of U.S. territories and self-governing areas, I wish to submit comment to the above-referenced Notice.

By way of brief background, Amway Corporation is a national manufacturer and distributor of a wide variety of home care and personal care products. Amway products are sold throughout the United States, in over 50 other countries, and in a number of U.S. territories and self-governing areas, including Puerto Rico, Guam, the U.S. Virgin Islands, and the Trust Territories of the Pacific. Amway products are sold by over one million independent Amway distributors worldwide, who as independent businesspersons are independent contractors. Certainly, Amway Corporation cares a great deal about laws and regulations which could impact these small Amway independent businesses.

The Amway business is based upon personal service to the customer and Amway products are generally sold on a person-to-person basis to family, friends and neighbors. Independent Amway distributorships do not base their businesses upon telephone solicitation. Occasionally, however, a distributor may meet a prospective customer at a social function or be referred by a current customer to a prospective customer and wish to telephone that person to set up an appointment. The FCC proposal would impact this common and innocuous practice.

At the outset, Amway takes no position on the use of auto dialers. Amway does not recommend their use to its independent distributors because of their impersonal nature and general ineffectiveness. A number of individual states already restrict or ban their use, and more are expected to follow suit in the near future.

However, Amway is concerned that the TCPA impacts the making of an occasional call to set up an appointment, generally based upon a previous meeting or personal referral. Amway particularly objects to the creation of a "database" - on a federal, regional or state level - of subscribers who wish not to receive telephone solicitation calls. The problems inherent in such a proposal are clear. While many of these shortcomings have already been outlined in the Notice, I wish to recap them here.

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List A B C D E

First, any database proposal - be it federal, regional or state - has inherent structural difficulties. The database concept is aimed at large boiler-room operations that may make thousands of telephone calls each day. Only extremely large operations could even consider purchasing the hardware and software necessary to set up and use such a database. There is no question that most small businesses - including nearly all direct sellers - would find it impossible to absorb the cost and handle the logistics of purchasing and maintaining this equipment.

Second, such a database would be outdated as soon as it was compiled and issued. Any attempt to keep it current would likely necessitate a quarterly or semi-annual issuance, which would also drive costs up enormously.

Third, any type of database fails to recognize that the vast majority of telephone solicitation calls are local in nature. Amway Corporation believes it makes no sense to force a person or small business which is only going to call locally to purchase and maintain an enormous and extremely expensive national (or regional or state) list. Further, it is similarly unfair to include small businesspeople who are not engaging in wholesale cold-calling but instead simply calling to follow-up on an occasional social meeting or occasional personal referral.

The Florida example referenced in the Notice is an example by default, and not a good one at that. The Florida law formerly contained an "extra line listing" provision for telephone directories. We believe the program worked effectively, and should not have been set aside.

Although the current Florida listing program has ostensibly been running for several years, the Florida Legislature subsequently enacted an omnibus Telemarketing Act in 1991 which set up a licensing requirement for telemarketers. Importantly, the new Florida law contains a number of important exemptions from covered "commercial telephone solicitation" activity. These include:

- (1) A person engaging in commercial telephone solicitation where the solicitation is an isolated transaction and not done in the course of the pattern of repeated transactions of like nature.
- (2) A person soliciting:
 - (a) Without the intent to complete or obtain provisional acceptance of a sale during the telephone solicitation.
 - (b) Who does not make the major sales presentation during the telephone solicitation.
 - (c) Without the intent to complete, and who does not complete, the sales presentation during the telephone solicitation, but who completes the sales presentation at a later face-to-face meeting between the solicitor and the prospective purchaser. However, if a seller, directly following a telephone solicitation, causes an individual whose primary purpose it is to go to the prospective purchaser to collect the payment or deliver any item purchased, this exemption does not apply.

Amway believes that the FCC Proposed Rules should contain these exemptions for the small direct seller, who may make an occasional call based upon a prior meeting or personal referral.

The second issue Amway Corporation wishes to address is Section 32 dealing with "Industry-Based or Company Specific Do Not Call Lists." Creation of lists of this type could cause real problems for direct selling companies such as Amway, which have independent distributors selling their products and services. Should a person call Amway Corporation, and request that he or she never (or never again) be called by an Amway distributor, this type of provision would place the company in an impossible position.

Amway businesses are independent in nature, and the company has no means of advising its many thousands of independent distributors throughout the country of a person who has made such a request. As a result, this type of proposal could result in a great deal of confusion and consternation. Companies may already create and use such lists on a voluntary basis where it is both practical and possible, but that creation and use should not be mandated by government. Amway therefore opposes the "Do Not Call List" concept.

Third, Amway is also opposed to Section 30's concept of a "telephone prefix" plan. Amway distributors often use their home phones to make both business and social calls, and a telephone prefix plan would be unable to differentiate types of calls. Further, independent Amway distributors do business throughout the entire country, may enter and leave the business on short notice, and the assignment of a telemarketing prefix would be both impractical and unworkable.

The fourth issue Amway Corporation wishes to comment upon involves Section 31, dealing with "Special Directory Markings." This type of proposal makes the most sense as it relates to small direct sellers who are making largely local calls; rather than being forced to buy an expensive database and attempting to keep it current, the direct seller could easily refer to his or her local telephone book for an asterisk or "extra line listing," or request the information from directory assistance. While this type of program would make life somewhat more complicated for national telemarketers, it would also make life easier for small, local businesses, including direct sellers, who do not have the resources of such national telemarketing organizations. Further, the national database scenario would be utterly impossible without the use of a powerful computer (and accompanying expensive software) which many small direct sellers can neither afford to buy or operate. On the other hand, everyone has access to a phone book or directory assistance.

Finally, regarding Section 33's "Time of Day" restrictions, Amway has no objection to the allowed hours of 9:00 a.m. to 9:00 p.m., so long there are no further restrictions, e.g., limitation of calls to specific days of the week.

In summary, Amway believes it is very important that small direct sellers be given protection in the FCC Rules and differentiated from the national telemarketers and boiler-room operators. As such, we respectfully suggest that the attached amendment be adopted into the proposed Rules.

Thank you for your attention to Amway's concerns.

Sincerely yours,



Dirk C. Bloemendaal, Counsel
Corporate Government Affairs

CC: John H. Brown

DCB2275:jb

SUGGESTED AMENDMENT TO APPENDIX B - PROPOSED RULES

§64.1100 Delivery restrictions.

* * *

- (c) The term "telephone call" in §64.1100(a)(2) shall not include a call or message by, or on behalf of, a caller:

* * *

- (5) that is an isolated transaction and not done in the course of the pattern of repeated transactions of like nature, or

- (6) that is made by a person calling:

(a) Without the intent to complete or obtain provisional acceptance of a sale during the telephone solicitation.

(b) Who does not make the major sales presentation during the telephone solicitation.

(c) Without the intent to complete, and who does not complete, the sales presentation during the telephone solicitation, but who completes the sales presentation at a later face-to face meeting between the solicitor and the prospective purchaser. However, if a seller, directly following a telephone solicitation, causes an individual whose primary purpose it is to go to the prospective purchaser to collect the payment or deliver any item purchased, this exemption does not apply.